

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 15,982
)	
Appeal of)	
)	

INTRODUCTION

The petitioner appeals a decision of the Department of Social and Rehabilitation Services (SRS) denying her application for a family day care home registration certificate. The issue is whether the petitioner's multiple convictions for fraud should prevent her from operating a day care home.

FINDINGS OF FACT

1. In February of 1999, the petitioner applied for the second time for a day care home registration certificate from SRS. Her first application, filed in 1995, was denied because of multiple fraud convictions. The denial was appealed and the decision was affirmed by the Human Services Board in Fair Hearing No. 13,713 which is attached hereto.

2. In discussions with the licensing chief following her first denial, the petitioner understood that she could reapply in the future and that her situation would be reconsidered at that time. The petitioner understood that her application might be viewed differently if she had not re-offended after the passage of a significant period of time.

3. When the petitioner reapplied in February of this

year, she attached a letter which informed the Department that since her last denial she had been convicted of misdemeanor retail theft in December of 1998 on a nolo contendere plea. She contends now, however, that she had not really been guilty of stealing videos from the grocery store, but had accidentally left them in her cart as she left the store. When she was confronted in the parking lot by the store manager, she became flustered and confused and signed a confession of guilt without reading what it was. Her public defender, she says, advised her to plead guilty because her prior convictions destroyed her chance of convincing a court of her credibility on this charge.

4. On April 22, 1999, the licensing chief mailed a denial of the application to the petitioner citing violations of the regulations prohibiting registration of persons convicted of fraud.

5. The petitioner appealed that decision and the matter was reviewed by a variance review panel on June 15, 1999. The petitioner was asked to and did provide a statement as to her position. In addition, the board reviewed the prior conviction records and the police affidavits supporting them. After reviewing this information, the committee made a decision and the Commissioner of SRS advised the petitioner by letter dated June 28, 1999, that the panel had determined not to grant the waiver due to the seriousness of the violations.

6. The petitioner agrees that she has the following convictions:

March 23, 1987 - Retail theft

April 6, 1987 - Uttering bad checks

March 27, 1989 - Fraudulent use of a credit card

(2 counts)

April 16, 1990 - Probation violation

April 2, 1991 - Petty larceny

December 7, 1998 - Retail theft (misdemeanor)

She contends, however, that these convictions do not reflect upon her ability to care for children and points out that she has been caring for children for years (under the exception for persons who care for the children of only two families) with no difficulty. She asked SRS to give her an opportunity to run a day care home and indicated she had no problem with regular monitoring of her efforts.

7. At the hearing, the program supervisor of the child care program explained that convictions for fraud do bear a relationship to suitability for day care home registration because it is a program in which trust is important in at least two areas: (1) following the rules and regulations relating to safety and health of children; and (2) honest billing of state and federal agencies for the provision of day care and food services to children. These programs rely heavily on the honesty of individuals since SRS does not have the resources to regularly monitor these

homes.

ORDER

The decision of the Department is affirmed.

REASONS

33 V.S.A. § 306 (b)(1) authorizes the Commissioner of Social and Rehabilitation Services to issue regulations and to prescribe standards governing the issuance of day care home registration certificates. Pursuant to this regulatory authority, the Department has promulgated the following relevant regulations:

SECTION I - ADMINISTRATION:

. . .

4. The following persons may not operate, reside at, be employed at or be present at a Family Day Care Home:
 - a. persons convicted of fraud, or an offense involving violence or unlawful sexual activity or another bodily injury including, but not limited to abuse, neglect and/or sexual activity with a child;

Regulations for Family Day Care Homes
Effective April 1, 1993

The petitioner in this matter raises essentially the same argument she did in 1995: that her convictions for fraud do not impact upon her ability to care for children. These same arguments were addressed and dismissed by the Board in Fair Hearing No. 13,713. There are no facts which

would cause the Board to reach a different conclusion now. Therefore, the reasoning of the Board in that case is adopted herein.

The petitioner was put on notice in 1995 that she might be granted a waiver regarding her fraud convictions in the future if she could show that these past convictions no longer bore any relationship to her current character. Far from showing that she has rehabilitated herself, the petitioner has reapplied within weeks of another conviction involving dishonesty. Although the petitioner protests her innocence before the Board, the appropriate forum to bring such a protest would have been at the district court hearing on the criminal matter. The Board is bound by the finding of the court that she was guilty of retail theft. Given this recent conviction, it cannot be said that SRS acted arbitrarily in refusing to grant her a waiver at this time.

As the Department's denial was in accord with its regulations and as those regulations appear to be valid both as written and as applied to the petitioner, the Board is bound to affirm its decision. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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